LIAN TECK CHEW v. KIEW LENG & CO.

[Orig. Civ. Juris. (Knight, J.) March 21, 1952]

[Singapore — Originating Motion No. 37 of 1951]

Landlord and tenant — Control of Rent Ordinance, 1947, ss. 2(b), 9(1)(b) and 13(1) — "Standard Rent" — Interpretation of.

In May 1946 the Rent Control Board fixed the rent for the whole of the premises known as No. 27 Eng Hoon Street, Singapore, at $150 per month.

In 1949 the applicant became tenant of only the first floor of these premises for which he paid $250 per month rent. In 1950 on his application for reduction of this rent, the Board after hearing the evidence reached the conclusion that it could not reduce the rent because these first floor premises were "unlet, unoccupied and unbuilt" on the 1st August 1939 and as they were first let separately on the 15th November 1949 the rent at which they were so let becomes their standard rent.

Held, that the rent of $150 per month of the whole premises is to be regarded as the standard rent. As there cannot be two standard rents the rent paid by the applicant in respect of only the first floor is mere current rent and under section 9(1)(b) of the Ordinance the Board has power to fix such rent in accordance with what seems equitable.

APPLICATION under Control of Rent Ordinance, 1947, s. 13(1).

C. F. J. Ess for the applicant.

H. R. Wilson for the respondents.

Cur. Adv. Vult.

Knight, J. : — This application comes before the Court under the provisions of section 13(1) of the Control of Rent Ordinance No. 25 of 1947, the applicant being aggrieved by a decision of the Rent Conciliation Board which was delivered on 7th September 1951. The point is an interesting one and it is not without difficulty.

Before the Board it was established that in May 1946 the then Rent Control Board examined certain premises situated at No. 27 Eng Hoon Street, Singapore and fixed the standard rent (as the Board had power to do) in the sum of $150 per month in respect of the whole premises. On 15th November 1949, and presumably without knowledge of the Board's action as to the standard rent, the applicant took over the first floor of these premises as a dwelling house at a rent of $250 per month. The area of the first floor is 50 ft. x 24 ft. and the applicant and his family have resided there paying the agreed rent ever since.

During 1950 the applicant, no doubt appreciating that he was paying a heavy rental, applied to the Rent Conciliation Board for a reduction. In September of that year a ruling was given in which the Board indicated that it was not satisfied that all material evidence had been adduced and directed that further evidence should be called before it. At the adjourned hearing (which was presided over by a different President) the Board, having heard all the material evidence reluctantly reached the conclusion that it could not reduce the applicant's rent because these first floor premises were "unlet, unoccupied and unbuilt" on 1st August 1939, and as they were first let separately on 15th November 1949, the rent at which they were so let becomes their standard rent under the definition of Standard Rent (b) in section 2 of the Control of Rent Ordinance 1947.

It is against this decision of the Rent Conciliation Board that the applicant seeks relief from this Court.

Now as I have said, the learned President of the Board made it clear in the Board's decision that had he and its members felt they had power to do so, they would have been glad to entertain this application before them. The difficulty which faced the Board, however, was that in this Colony (unlike the United Kingdom) there is no power to apportion rent and the Board took the view that as the first letting of the upper floor — premises which were unlet, unoccupied and unbuilt in August 1939 — took place in 1949, they had no option but to call the agreed rent the standard rent being bound by definition (b) of "Standard Rent" in section 2 of the Ordinance.

The matter has been argued on somewhat different lines in this Court. Learned Counsel for the applicant makes the point that we are not really concerned with definition (b) as the case is exactly covered by definition (a). The rent of the entire premises, i.e. the whole house as well as its first floor, was fixed, he rightly points out, by the then Rent Board "prior to the commencement of the (1947) Ordinance." How, maintains Counsel, can there possibly be two standard rents — one of which, for only part of the building is far greater than that of the whole building? This point, of course, had not escaped the Rent Conciliation Board and in its decision the President admitted that on this interpretation anomalies must follow. I agree, but with respect must go even further — the position would be anomalous; it would be nonsensical.

In my opinion (and I am fortified in this by the wording of section 13(1) of the Ordinance which binds this Court to see that "substantial justice is done") the contention of the applicant's learned Counsel should clearly prevail. The then Board, having fixed the rent for the whole of this house at $150 per month, this rent, under definition (a), must

clearly become the standard rent. It was never the intention of the legislature to allow of two standard rents for the same premises and such an interpretation, as I see it, would make a mockery of the law which is aimed at helping tenants and not creating anomalies or absurdities. Although the Board would appear to have no powers of apportionment, I can see no difficulty confronting its members (provided always that the previous Rent Board was a responsible body) in ascertaining what is a fair and reasonable rent for the applicant to pay and in reaching this figure the Board will no doubt keep in mind the standard rent of the whole premises.

I find therefore, that the standard rent of the whole of the premises situated at No. 27, Eng Hoon Street is $150 per month and that the rent paid by the applicant is merely current rent. Under section 9(1)(b) of the Ordinance, the Board has powers to fix such rent in accordance with what seems to be equitable and I direct that these proceedings should be remitted to the Board and that action should be taken accordingly. The applicant will be awarded costs of this application.

Order accordingly.

Re S. E. MENAHEM.

[Orig. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) March 21, 1952]

[Singapore — Bankruptcy No. 159 of 1951]

Bankruptcy Ordinance (Cap. 45) s. 3(1)(i) — Judgment for costs — Bankruptcy petition.

In this case the debtor brought an action in contract against the petitioning creditor. This action was unsuccessful and judgment was given in favour of the petitioning creditor with costs. These costs were taxed and were not paid. The petitioning creditor sought to make the debtor bankrupt.

Held, that a judgment for costs only would support a bankruptcy petition.*

Cases referred to:—

(1) *Re Leo Hoon Hong* (1951) M.L.J. 222 dissented from.

(2) *Ex parte Moore* (1885), 14 Q.B.D. 627.

(3) *In re Alexander* (1892) 1 Q.B. 216.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — In this case the debtor brought an action in contract against the petitioning creditor. This action was unsuccessful and judgment was given in favour of the petitioning creditor with costs. These costs were taxed and were not paid. The petitioning creditor now seeks to make the debtor bankrupt.

At the hearing counsel for the petitioning creditor called my attention to a recent case in the Federation from Malacca reported in (1951) M.L.J. 222[1], in which it was held that a judgment for costs was not a final judgment within section 3(1)(i) of the Bankruptcy Ordinance.

Our Ordinance in this matter follows the English Act of 1883. The difference between that Act and the present Act being the omission of the words "or order" after the word "judgment". The learned Judge did not quote any authority but after consulting English cases under the 1883 Act I find ample authority for the proposition that a judgment for costs only would support a bankruptcy petition. (See *Ex Moore*[2], *In re Alexander*[3]). The cases to the contrary were those in which the liability to pay costs did not arise from a judgment.

Order accordingly.

* See the judgment of Murray-Aynsley, J. (as he then was) in *Re Looi Guan Kway* (1941) M.L.J. 228 where the learned Judge in somewhat similar circumstances held that the matter was covered by s. 237 of the Civil Procedure Code (Cap. 7) and 1932 Rule No. 4, sub-rr. 59 and 70. — *Ed. M.L.J.*

PUBLIC PROSECUTOR v. GAN LOH.

[App. Crim. Juris. (Wilson, J.) May 19, 1952]

[Selangor — Criminal Appeal No. 17 of 1952]

Emergency (Rubber Control) Regulations, 1949, Regulation 5(2) — Prosecution for an offence under the Regulation — Proof of possession.

In a prosecution for an offence under the Emergency (Rubber Control) Regulations it is not necessary to prove that the accused person had actual possession of the rubber. It is sufficient to prove that he had potential physical control of the rubber.

Cases referred to:—

(1) *Chong Kon Lip v. Public Prosecutor* (1946) M.L.J. 165.

(2) *Tan Shu En & Anor. v. Public Prosecutor* (1948) M.L.J. 196.

CRIMINAL APPEAL.

D. M. K. Grant (D.P.P.) for the appellant.

M. Edgar for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The respondent was charged with being in unlawful possession of rubber. At the close of the case for the prosecution, the learned